

STATE OF NEW YORK : NASSAU COUNTY

SUPREME COURT PART 11

- - - - -X

THE PEOPLE OF THE STATE OF NEW YORK, SCI/IND. NO.
167N-05

-against-

TRIAL

MARK ORLANDO,

Defendant.

- - - - -X

262 Old Country Road
Mineola, New York
May 31, 2005

B e f o r e:

HON. DAVID P. SULLIVAN, Supreme Court Justice

A p p e a r a n c e s:

HON. DENIS DILLON
District Attorney, Nassau County
By: ROBERT T. HAYDEN, ESQ.
Assistant District Attorney

DENNIS LEMKE, ESQ.
Attorney for Defendant
114 Old Country Road
Mineola, N.Y. 11501

Mary Ociskai
Official Court Reporter

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1 THE CLERK: Case on trial, indictment 167N-05,
2 People versus Mark Orlando.

3 May we have appearances, please, for the record,
4 People.

5 MR. HAYDEN: Robert T. Hayden for the People.

6 MR. LEMKE: For Mr. Orlando, Dennis Lemke, 114
7 Old Country Road, Mineola, New York.

8 Good afternoon, Your Honor.

9 THE CLERK: People ready to proceed?

10 MR. HAYDEN: People are ready, Your Honor.

11 THE CLERK: Defendant ready?

12 MR. LEMKE: Defendant ready, Your Honor.

13 THE CLERK: Let the record reflect the
14 presence of the defendant, Mr. Orlando.

15 THE COURT: Good afternoon.

16 Just for the record, we're going, Mr. Orlando,
17 we're going to do some preliminary things before we get
18 into the trial. This is all part of the trial. Okay.

19 Counsel, just for the record, this Court was sent
20 this case for trial. I have an indictment and I have
21 reviewed the indictment, and I see count two of said
22 indictment, Murder in the Second Degree, 125.25(1) of
23 the Penal Law.

24 That is the only count against Mr. Orlando; is that
25 correct, Mr. Lemke?

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1 MR. LEMKE: That's correct, Your Honor.

2 THE COURT: Mr. Hayden.

3 MR. HAYDEN: Yes, Your Honor, that is so.

4 THE COURT: I have reviewed the transcript
5 decision by the Honorable Alan Honorof of this Court,
6 with respect to the preliminary hearings and decision
7 thereon, and according to the transcripts I have read,
8 Judge Honorof found no constitutional impediment to the
9 People introducing the statements that were the subject
10 matter of that hearing into the trial and also Judge
11 Honorof found that there was appropriate consent by Mr.
12 Orlando with respect to items seized from his business
13 premises.

14 Anyone have any different view of the decision of
15 that Court?

16 MR. HAYDEN: No, Your Honor.

17 MR. LEMKE: No, Your Honor. Only the
18 statements permitted on the People's direct case or on
19 cross, if they choose, my client's were his statements,
20 not the codefendant. Any applications I believe there
21 may be, that is, certain issues Judge Honorof's
22 decision, the statements allegedly made by my client,
23 number of them, could be used by the People against my
24 client.

25 THE COURT: Clearly this decision I am talking

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MISSING
(NEVER RECEIVED
FROM DEFENSE
COUNSEL)

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1 the activated Unlicensed Operation in the Second Degree,
2 that occurred on or about December 1, 1997, was
3 adjudicated on or about May 26, '99. The Court feels
4 that it does indicate that the defendant will put his
5 self interest above of that society. Also, being no
6 objection to that by counsel.

7 With respect to the additional applications by the
8 People contained in Mr. Hayden's affirmation, which I
9 will mark as Court exhibit II, the application is
10 denied.

11 With respect to anything about a warrant that was
12 involved in the hearings before Judge Honorof, the Court
13 feels that that is inexplicably intertwined with the and
14 it would be an incomplete story to the jury if they
15 weren't able to hear that.

16 Accordingly, the Court will allow that testimony to
17 come out during the course of the trial.

18 Mr. Hayden, anything you want to be heard on
19 further?

20 MR. HAYDEN: The only thing I would add, there
21 were two warrants, just to correct the record, there was
22 two warrants at the time of his arrest, at the time he
23 was picked up.

24 THE COURT: Okay. As the Court has indicated
25 with respect to the warrants, the Court will allow

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1 testimony to that respect that your client, Mr. Lemke,
2 had warrants at the time. But anything further the
3 Court will listen to any application. The Court
4 wouldn't allow anything prejudicial to the jury.

5 MR. LEMKE: Right. I certainly may open the
6 door somewhat, but I am not going to permit the jury to
7 hear about outstanding warrants and have them
8 speculate. In fact they were for basically unclassified
9 misdemeanors, that being a suspension.

10 THE COURT: Yes, sir.

11 MR. LEMKE: Thank you.

12 THE COURT: No problem.

13 Going to mark this as Court exhibit II, the
14 affidavit by Mr. Hayden.

15 So, we're clear on the Sandoval ruling then?

16 MR. LEMKE: Yes.

17 MR. HAYDEN: Yes.

18 THE COURT: Anything further at this point for
19 the Court?

20 I intend to start jury selection tomorrow at
21 approximately ten o'clock. Trying to get a courtroom
22 that is big enough for a pool of say seventy-five and,
23 is that good for you, Mr. Hayden?

24 MR. HAYDEN: Yes, it is, Your Honor.

25 THE COURT: Mr. Lemke.

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1 MR. LEMKE: That is fine, Your Honor.

2 THE COURT: If you want to report here a few
3 minutes before ten or call here, we will let you know
4 what courtroom we're using.

5 Any further applications.

6 MR. LEMKE: Just scheduling. I believe the
7 case will probably move along pretty quickly with a
8 little luck. May have a jury Friday, we can open, based
9 upon the discussion regarding Monday, I ask to continue
10 then right into Tuesday without any possible delay.

11 THE COURT: Right. The Court has been made
12 aware of a problem for Monday. The Court will not sit
13 on this trial Monday. We will finish Friday and then
14 adjourn to Tuesday of next week.

15 Just for counsel, we use the questionnaires so you
16 will have that available, and I guess that is about it.

17 Same bail conditions.

18 MR. LEMKE: Thank you, Your Honor.

19 (Whereupon, the trial was adjourned to May 31,
20 2005.)

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